



Patent Technology Center 1600

Facsimile Transmission

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37 C.F.R. 1.6 sets forth the types of correspondence that can be communicated to the Patent and Trademark Office via facsimile transmissions. Applicants are advised to use the certificate of facsimile transmission procedures when submitting a reply to a non-final or final Office action by facsimile (37 CFR 1.8(a)).

Fax Notes:

Mr. Hagan:

Further to our telephone conversation earlier today ON YOUR REF: 0380 P02546US0, enclosed is a Draft Proposed Examiner's Amendment for your consideration. I will appreciate an answer by 9:00 A.M. on Wednesday, 6/09/2004.

Should you have a question, Please call me at (571)-272-0923. My working hours are Monday through Thursday 7:30 A.M. to 6:00 P.M. PLEASE NOTE, HOWEVER, THAT THIS THURSDAY (i.e., 06/10/2004) I HAVE A DAY OFF.
Thank you.

Date and time of transmission: Monday, June 07, 2004 4:12:24 PM
Number of pages including this cover sheet: 04

DRAFT

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with
*** on ***.

1. In the Claims:

- In each of Claims 3, 53 and 55 at Line 2, the word "obtainable" has been replaced with the word -- obtained --.
- In Claim 3 at Lines 4-5, the phrase ", said insect species being selected from the group consisting of *Pieris brassicae*, *Plutella xylostella*, *Phaedon cochleariae* and *Myzus persicae*" has been deleted.
- In claim 54, at lines 2-4, the phrase "insects of two or more order selected from: *Lepidoptera*, *Coleoptera* and *Homoptera*" has been replaced with -- at least one insect from two or more orders selected from the group consisting of *Lepidoptera*; *Coleoptera*; and *Homoptera* --.
- In claim 56, at lines 2-3, the phrase "insects of two or more orders" has been replaced with -- at least one insect from two or more orders selected from: *Lepidoptera*, *Coleoptera* and *Homoptera*--.

Add new claim 57.

- 57. (New) The pesticidal agent according to claim 3, wherein said insect species is selected from the group consisting of *Pieris brassicae*, *Plutella xylostella*, *Phaedon cochleariae* and *Myzus persicae*.

2. The following is an examiner's statement of reasons for allowance:

Replacing the word "obtainable" with word "obtained" gives definitiveness to the claims to indicate that the claimed product is indeed from the claimed microorganisms.

Applicants' Declaration filed April 05, 2004 clearly shows in a side by side comparison that in contrast to the insecticidal product taught in the prior art, obtained from an organism (i.e., *Xenorhabdus nematophilus*) of the same Genus (i.e., *Xenorhabdus*), the instantly claimed insecticidal product obtained from two different strains (i.e., H31 and I73) of *Xenorhabdus bovienni* is active against four different insect pests (i.e., *Pieris brassicae*, *Plutella xylostella*, *Phaedon cochleariae* and *Myzus persicae*) but inactive against lepidopteran insect *Heliothis virescens* and dipteran mosquito pest *Aedes aegyptii*.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claims 3 and 53-57 are allowed.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kailash C. Srivastava whose telephone number is (571)

272-0923. The examiner can normally be reached on Monday to Thursday from 7:30 A.M. to 6:00 P.M. (Eastern Standard or Daylight Savings Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743 Monday through Thursday. The fax phone number for the organization where this application or proceeding is assigned is (703)-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Kailash C. Srivastava, Ph.D.
Patent Examiner
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(571) 272-0923

June xx, 2004